IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM BUFORD,

       Petitioner,   Case No. 2:03-cv-2412 ALA (HC)

       vs.

D. BUTLER, Warden,   <u>ORDER</u>

       Respondent.

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     Petitioner is proceeding *pro se* with an application for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner filed his petition on November 19, 2003. Respondent filed an answer on February 9, 2004. Petitioner filed a traverse on March 18, 2004.[1] Due to the length of time the case has been pending, on April 8, 2008, the Court ordered the parties to file simultaneous briefs addressing any changes in the applicable law. (Doc. No. 16). On April 22, 2008, Petitioner filed a document entitled "First Amended Petition and Notice of Relevant Cases." (Doc. No. 17). He attached the Court's April 8, 2008 Order to his filing.

     Since an answer has been filed, Petitioner cannot amend his petition without seeking leave of court. Fed. R. Civ. P. 15(a)(2). Since he did not seek leave of court, it is assumed that

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[1]This case was transferred to this Court on July 3, 2007.

1   Petitioner did not intend to file an amended petition. Therefore, his document entitled "First

2   Amended Petition and Notice of Relevant Cases" (Doc. No. 17) will be construed as

3   supplemental briefing in response to the Court's April 8, 2008 order (Doc. No. 16). His original

4   petition will not be treated as superceded. The Court appreciates that Respondent pointed out

5   that Petitioner may be harmed if the Court treated the filing as a first amended petition since

6   Petitioner failed to incorporate the issues raised in his original petition (Doc. No. 20).

7   Accordingly, Petitioner's "First Amended Petition and Notice of Relevant Cases" will be

8   treated as supplemental briefing, and not as a first amended petition. Therefore, the Court's

9   April 19, 2008 Order (Doc. No. 19) asking Respondent to reply to the filing is hereby

10 VACATED.

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12 DATED: May 2, 2008

                                                    /s/ Arthur L. Alarcón
13   UNITED STATES CIRCUIT JUDGE
                                                    Sitting by Designation
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